IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7258 OF 2005

Shri Dudhaganga Sahakari Pani
Puravatha Sanstha Maryadit,
Kasaba Sangav .. Petitioners

Vs.

Shri Prakash Nagari Sahakari
Patsanstha Maryadit, Kasaba
Sangav .. Respondents

Mr.A.A.Kumbhakoni with Mr.A.M.Kulkarni for the petitioners

Mr.T.S.Ingale for the respondent no.1

CORAM : S.U.KAMDAR, J
DATED : 24TH NOVEMBER, 2005

P.C.:

1. The present petition is filed challenging the order passed by the Maharashtra State Co-op. Appellate Court, Pune in A.O.No.177, 178 and 179 of 2005 dt.14.10.2005. The trial court by order dt.5.10.05 after considering the material on record has come to the conclusion that the petitioners were not in possession of the property as on the date of the suit and thus, refused to grant injunction to protect the possession of the petitioner. The said finding has been upheld in

the revision by the Co-op.Appellate Court, Pune.

2. The learned counsel for the petitioners has sought to challenge the said order and has contended that in fact it was the petitioners who were in possession and by virtue of the impugned order petitioners would lose the possession and their suit would become infructuous. It has been further contended that by the impugned order an irreversible situation has been created by the courts below.

3. In my opinion, if the suit is merely for injunction and if finding is given on facts by both the courts below on the appreciation of material including the the report of the court commissioner that the petitioner was not in possession of the property then it is not permissible under Article 227 of the Constitution of India to disturb such finding of fact by re-appreciating the material and facts which was placed before the trial court and thereafter substituting my view with that of the courts below.

4. In my view, this is not a case in which concurrent finding of fact rendered by the courts below pertaining to the possession of the petitioner should be disturbed in writ jurisdiction under article 227 of the Constitution of India. Petition accordingly fails and the same is dismissed. In view of dismissal of petition, civil application does not survive. The same is also dismissed as infructuous.